

SEP 9 1 11 PM '64

**Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Hart, Pentwater, Coopersville, Frankfort
and Garfield Township, Michigan)**

MB Docket No. 02-335
RM-10545

² *Hart, Pentwater and Coopersville, Michigan*, 17 FCC Rcd 22086 (MB 2002).

operation on Channel 287B at Coopersville.³ In doing so, we dismissed the Fort Bend Counterproposal. We dismissed this Counterproposal for two reasons. First, the proposed Channel 287A substitution at Glen Arbor was short-spaced to the Station WCXT license on Channel 287C2 at Hart in contravention of Section 73.208 of the rules. Second, the Counterproposal proposed the allotment of Channel 227A to Frankfort as a backfill to the removal of the sole local service at Frankfort. In this regard, the Commission had specifically instructed the staff to cease this practice.⁴ Thereafter, Fort Bend filed a Petition for Partial Reconsideration directed against the dismissal of its Counterproposal.

4. In support of its Petition for Partial Reconsideration, Fort Bend contends that its Counterproposal was a valid counterproposal and entitled to consideration in this proceeding. Fort Bend also argues that since its Counterproposal was filed prior to the Commission decision in *Pacific Broadcasting of Missouri LLC, supra*, that decision should not apply retroactively in this proceeding and it should be permitted to propose allotting Channel 227A to Frankfort as a replacement service. In this instance, Fort Bend argues that reversing the long-standing policy and instituting a new policy retroactively requires a notice and comment rulemaking proceeding.

5. We deny the Petition for Partial Reconsideration. The Fort Bend Counterproposal is not an acceptable counterproposal in this proceeding because it conflicts with the Station WXCT license on Channel 287C2 at Hart and is therefore contingent on Channel 287C2 being removed from Hart.⁵ This is fatal to the Fort Bend Counterproposal notwithstanding the fact that the Counterproposal may also be in conflict with the underlying proposal for a Channel 287B allotment at Coopersville. We continue to believe that it would not be conducive to the efficient transaction of allotment proceedings to accept contingent proposals into a proceeding that could not be granted unless a separate proposal is granted. We also reject the Fort Bend argument that we could not retroactively modify our backfill policy in resolving pending rulemaking proceedings. On June 16, 2004, the Commission released a *Memorandum Opinion and Order* denying a Petition for Reconsideration filed by Pacific Broadcasting of Missouri, LLC.⁶ In doing so, the Commission rejected the identical arguments advanced by Fort Bend in this proceeding. The Commission specifically determined that it has the authority to cease the application of a policy, even in pending cases, when the policy becomes contrary to the public interest. Even though the change in policy upsets the expectation that current rules and policies will continue, the Commission stated that this does not constitute unlawful retroactive rule making.

6. Accordingly, IT IS ORDERED, That the aforementioned Petition for Partial Reconsideration filed by Fort Bend Broadcasting Company IS DENIED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

³ We allotted Channel 287C2 at Coopersville at an alternate transmitter site that could permit Fort Bend to refile its proposal once a replacement service is authorized at Frankfort.

⁴ *Pacific Broadcasting of Missouri LLC*, 18 FCC Rcd 2291 (2003), *recon. denied*, 19 FCC Rcd 10950 (2004).

⁵ See *Ironton, Malden and Salem, Missouri*, 13 FCC Rcd 6584 (MMB 1998); *Indian Springs, Nevada, Mountain Pass, California, Kingman, Arizona, and St. George, Utah*, 14 FCC Rcd 10568 (MMB 1999).

⁶ *Pacific Broadcasting of Missouri LLC, supra*.

8. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Assistant Chief, Audio Division
Media Bureau**